

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Krekorian

February 26, 2009

An act to amend Sections 56.10, 56.104, and 56.11 of, and to add Chapter 2.7 (commencing with Section 56.19) to Part 2.6 of Division 1 of, the Civil Code, relating to health information.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as introduced, Krekorian. Health information: health plans.

Existing law, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance and, among other things, requires the Secretary of the United States Department of Health and Human Services to publicize the standards for the electronic exchange, privacy, and security of protected health information, as defined.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care service plan from disclosing medical information, as defined, regarding an enrollee or subscriber of the health care service plan, except as specified. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would, notwithstanding any other provision of law, authorize a health plan, as defined, to disclose summary health information and protected health information to the health plan's third party administrator or to another health plan to the extent authorized by, and in a manner consistent with, HIPAA and the regulations adopted thereunder. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c) *or in Section 56.19*.

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal

1 deaths, or when otherwise authorized by the decedent's
2 representative. Medical information requested by the coroner under
3 this paragraph shall be limited to information regarding the patient
4 who is the decedent and who is the subject of the investigation and
5 shall be disclosed to the coroner without delay upon request.

6 (9) When otherwise specifically required by law.

7 (c) A provider of health care or a health care service plan may
8 disclose medical information as follows:

9 (1) The information may be disclosed to providers of health
10 care, health care service plans, contractors, or other health care
11 professionals or facilities for purposes of diagnosis or treatment
12 of the patient. This includes, in an emergency situation, the
13 communication of patient information by radio transmission or
14 other means between emergency medical personnel at the scene
15 of an emergency, or in an emergency medical transport vehicle,
16 and emergency medical personnel at a health facility licensed
17 pursuant to Chapter 2 (commencing with Section 1250) of Division
18 2 of the Health and Safety Code.

19 (2) The information may be disclosed to an insurer, employer,
20 health care service plan, hospital service plan, employee benefit
21 plan, governmental authority, contractor, or any other person or
22 entity responsible for paying for health care services rendered to
23 the patient, to the extent necessary to allow responsibility for
24 payment to be determined and payment to be made. If (A) the
25 patient is, by reason of a comatose or other disabling medical
26 condition, unable to consent to the disclosure of medical
27 information and (B) no other arrangements have been made to pay
28 for the health care services being rendered to the patient, the
29 information may be disclosed to a governmental authority to the
30 extent necessary to determine the patient's eligibility for, and to
31 obtain, payment under a governmental program for health care
32 services provided to the patient. The information may also be
33 disclosed to another provider of health care or health care service
34 plan as necessary to assist the other provider or health care service
35 plan in obtaining payment for health care services rendered by that
36 provider of health care or health care service plan to the patient.

37 (3) The information may be disclosed to a person or entity that
38 provides billing, claims management, medical data processing, or
39 other administrative services for providers of health care or health
40 care service plans or for any of the persons or entities specified in

1 paragraph (2). However, information so disclosed shall not be
2 further disclosed by the recipient in a way that would violate this
3 part.

4 (4) The information may be disclosed to organized committees
5 and agents of professional societies or of medical staffs of licensed
6 hospitals, licensed health care service plans, professional standards
7 review organizations, independent medical review organizations
8 and their selected reviewers, utilization and quality control peer
9 review organizations as established by Congress in Public Law
10 97-248 in 1982, contractors, or persons or organizations insuring,
11 responsible for, or defending professional liability that a provider
12 may incur, if the committees, agents, health care service plans,
13 organizations, reviewers, contractors, or persons are engaged in
14 reviewing the competence or qualifications of health care
15 professionals or in reviewing health care services with respect to
16 medical necessity, level of care, quality of care, or justification of
17 charges.

18 (5) The information in the possession of a provider of health
19 care or health care service plan may be reviewed by a private or
20 public body responsible for licensing or accrediting the provider
21 of health care or health care service plan. However, no
22 patient-identifying medical information may be removed from the
23 premises except as expressly permitted or required elsewhere by
24 law, nor shall that information be further disclosed by the recipient
25 in a way that would violate this part.

26 (6) The information may be disclosed to the county coroner in
27 the course of an investigation by the coroner's office when
28 requested for all purposes not included in paragraph (8) of
29 subdivision (b).

30 (7) The information may be disclosed to public agencies, clinical
31 investigators, including investigators conducting epidemiologic
32 studies, health care research organizations, and accredited public
33 or private nonprofit educational or health care institutions for bona
34 fide research purposes. However, no information so disclosed shall
35 be further disclosed by the recipient in a way that would disclose
36 the identity of a patient or violate this part.

37 (8) A provider of health care or health care service plan that has
38 created medical information as a result of employment-related
39 health care services to an employee conducted at the specific prior

1 written request and expense of the employer may disclose to the
2 employee's employer that part of the information that:

3 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
4 or challenge to which the employer and the employee are parties
5 and in which the patient has placed in issue his or her medical
6 history, mental or physical condition, or treatment, provided that
7 information may only be used or disclosed in connection with that
8 proceeding.

9 (B) Describes functional limitations of the patient that may
10 entitle the patient to leave from work for medical reasons or limit
11 the patient's fitness to perform his or her present employment,
12 provided that no statement of medical cause is included in the
13 information disclosed.

14 (9) Unless the provider of health care or health care service plan
15 is notified in writing of an agreement by the sponsor, insurer, or
16 administrator to the contrary, the information may be disclosed to
17 a sponsor, insurer, or administrator of a group or individual insured
18 or uninsured plan or policy that the patient seeks coverage by or
19 benefits from, if the information was created by the provider of
20 health care or health care service plan as the result of services
21 conducted at the specific prior written request and expense of the
22 sponsor, insurer, or administrator for the purpose of evaluating the
23 application for coverage or benefits.

24 (10) The information may be disclosed to a health care service
25 plan by providers of health care that contract with the health care
26 service plan and may be transferred among providers of health
27 care that contract with the health care service plan, for the purpose
28 of administering the health care service plan. Medical information
29 shall not otherwise be disclosed by a health care service plan except
30 in accordance with this part.

31 (11) This part does not prevent the disclosure by a provider of
32 health care or a health care service plan to an insurance institution,
33 agent, or support organization, subject to Article 6.6 (commencing
34 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
35 Insurance Code, of medical information if the insurance institution,
36 agent, or support organization has complied with all of the
37 requirements for obtaining the information pursuant to Article 6.6
38 (commencing with Section 791) of Chapter 1 of Part 2 of Division
39 1 of the Insurance Code.

1 (12) The information relevant to the patient's condition, care,
2 and treatment provided may be disclosed to a probate court
3 investigator in the course of an investigation required or authorized
4 in a conservatorship proceeding under the
5 Guardianship-Conservatorship Law as defined in Section 1400 of
6 the Probate Code, or to a probate court investigator, probation
7 officer, or domestic relations investigator engaged in determining
8 the need for an initial guardianship or continuation of an existing
9 guardianship.

10 (13) The information may be disclosed to an organ procurement
11 organization or a tissue bank processing the tissue of a decedent
12 for transplantation into the body of another person, but only with
13 respect to the donating decedent, for the purpose of aiding the
14 transplant. For the purpose of this paragraph, "tissue bank" and
15 "tissue" have the same meanings as defined in Section 1635 of the
16 Health and Safety Code.

17 (14) The information may be disclosed when the disclosure is
18 otherwise specifically authorized by law, including, but not limited
19 to, the voluntary reporting, either directly or indirectly, to the
20 federal Food and Drug Administration of adverse events related
21 to drug products or medical device problems.

22 (15) Basic information, including the patient's name, city of
23 residence, age, sex, and general condition, may be disclosed to a
24 state-recognized or federally recognized disaster relief organization
25 for the purpose of responding to disaster welfare inquiries.

26 (16) The information may be disclosed to a third party for
27 purposes of encoding, encrypting, or otherwise anonymizing data.
28 However, no information so disclosed shall be further disclosed
29 by the recipient in a way that would violate this part, including the
30 unauthorized manipulation of coded or encrypted medical
31 information that reveals individually identifiable medical
32 information.

33 (17) For purposes of disease management programs and services
34 as defined in Section 1399.901 of the Health and Safety Code,
35 information may be disclosed as follows: (A) to an entity
36 contracting with a health care service plan or the health care service
37 plan's contractors to monitor or administer care of enrollees for a
38 covered benefit, if the disease management services and care are
39 authorized by a treating physician, or (B) to a disease management
40 organization, as defined in Section 1399.900 of the Health and

1 Safety Code, that complies fully with the physician authorization
2 requirements of Section 1399.902 of the Health and Safety Code,
3 if the health care service plan or its contractor provides or has
4 provided a description of the disease management services to a
5 treating physician or to the health care service plan's or contractor's
6 network of physicians. This paragraph does not require physician
7 authorization for the care or treatment of the adherents of a
8 well-recognized church or religious denomination who depend
9 solely upon prayer or spiritual means for healing in the practice
10 of the religion of that church or denomination.

11 (18) The information may be disclosed, as permitted by state
12 and federal law or regulation, to a local health department for the
13 purpose of preventing or controlling disease, injury, or disability,
14 including, but not limited to, the reporting of disease, injury, vital
15 events, including, but not limited to, birth or death, and the conduct
16 of public health surveillance, public health investigations, and
17 public health interventions, as authorized or required by state or
18 federal law or regulation.

19 (19) The information may be disclosed, consistent with
20 applicable law and standards of ethical conduct, by a
21 psychotherapist, as defined in Section 1010 of the Evidence Code,
22 if the psychotherapist, in good faith, believes the disclosure is
23 necessary to prevent or lessen a serious and imminent threat to the
24 health or safety of a reasonably foreseeable victim or victims, and
25 the disclosure is made to a person or persons reasonably able to
26 prevent or lessen the threat, including the target of the threat.

27 (20) The information may be disclosed as described in Section
28 56.103.

29 (d) Except to the extent expressly authorized by a patient or
30 enrollee or subscriber or as provided by subdivisions (b) and (c)
31 *or in Section 56.19*, a provider of health care, health care service
32 plan, contractor, or corporation and its subsidiaries and affiliates
33 shall not intentionally share, sell, use for marketing, or otherwise
34 use medical information for a purpose not necessary to provide
35 health care services to the patient.

36 (e) Except to the extent expressly authorized by a patient or
37 enrollee or subscriber or as provided by subdivisions (b) and (c),
38 a contractor or corporation and its subsidiaries and affiliates shall
39 not further disclose medical information regarding a patient of the
40 provider of health care or an enrollee or subscriber of a health care

1 service plan or insurer or self-insured employer received under
2 this section to a person or entity that is not engaged in providing
3 direct health care services to the patient or his or her provider of
4 health care or health care service plan or insurer or self-insured
5 employer.

6 SEC. 2. Section 56.104 of the Civil Code is amended to read:

7 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
8 except as authorized in paragraph (1) of subdivision (c) of Section
9 56.10 *or in Section 56.19*, no provider of health care, health care
10 service plan, or contractor may release medical information to
11 persons or entities authorized by law to receive that information
12 pursuant to subdivision (c) of Section 56.10, if the requested
13 information specifically relates to the patient's participation in
14 outpatient treatment with a psychotherapist, unless the person or
15 entity requesting that information submits to the patient pursuant
16 to subdivision (b) and to the provider of health care, health care
17 service plan, or contractor a written request, signed by the person
18 requesting the information or an authorized agent of the entity
19 requesting the information, that includes all of the following:

20 (1) The specific information relating to a patient's participation
21 in outpatient treatment with a psychotherapist being requested and
22 its specific intended use or uses.

23 (2) The length of time during which the information will be
24 kept before being destroyed or disposed of. A person or entity may
25 extend that timeframe, provided that the person or entity notifies
26 the provider, plan, or contractor of the extension. Any notification
27 of an extension shall include the specific reason for the extension,
28 the intended use or uses of the information during the extended
29 time, and the expected date of the destruction of the information.

30 (3) A statement that the information will not be used for any
31 purpose other than its intended use.

32 (4) A statement that the person or entity requesting the
33 information will destroy the information and all copies in the
34 person's or entity's possession or control, will cause it to be
35 destroyed, or will return the information and all copies of it before
36 or immediately after the length of time specified in paragraph (2)
37 has expired.

38 (b) The person or entity requesting the information shall submit
39 a copy of the written request required by this section to the patient
40 within 30 days of receipt of the information requested, unless the

1 patient has signed a written waiver in the form of a letter signed
2 and submitted by the patient to the provider of health care or health
3 care service plan waiving notification.

4 (c) For purposes of this section, “psychotherapist” means a
5 person who is both a “psychotherapist” as defined in Section 1010
6 of the Evidence Code and a “provider of health care” as defined
7 in subdivision (i) of Section 56.05.

8 (d) This section does not apply to the disclosure or use of
9 medical information by a law enforcement agency or a regulatory
10 agency when required for an investigation of unlawful activity or
11 for licensing, certification, or regulatory purposes, unless the
12 disclosure is otherwise prohibited by law.

13 (e) Nothing in this section shall be construed to grant any
14 additional authority to a provider of health care, health care service
15 plan, or contractor to disclose information to a person or entity
16 without the patient’s consent.

17 SEC. 3. Section 56.11 of the Civil Code is amended to read:

18 56.11. Any person or entity that wishes to obtain medical
19 information pursuant to subdivision (a) of Section 56.10, other
20 than a person or entity authorized to receive medical information
21 pursuant to *Section 56.19* or subdivision (b) or (c) of Section 56.10,
22 shall obtain a valid authorization for the release of this information.

23 An authorization for the release of medical information by a
24 provider of health care, health care service plan, pharmaceutical
25 company, or contractor shall be valid if it:

26 (a) Is handwritten by the person who signs it or is in a typeface
27 no smaller than 14-point type.

28 (b) Is clearly separate from any other language present on the
29 same page and is executed by a signature which serves no other
30 purpose than to execute the authorization.

31 (c) Is signed and dated by one of the following:

32 (1) The patient. A patient who is a minor may only sign an
33 authorization for the release of medical information obtained by
34 a provider of health care, health care service plan, pharmaceutical
35 company, or contractor in the course of furnishing services to
36 which the minor could lawfully have consented under Part 1
37 (commencing with Section 25) or Part 2.7 (commencing with
38 Section 60).

39 (2) The legal representative of the patient, if the patient is a
40 minor or an incompetent. However, authorization may not be given

1 under this subdivision for the disclosure of medical information
2 obtained by the provider of health care, health care service plan,
3 pharmaceutical company, or contractor in the course of furnishing
4 services to which a minor patient could lawfully have consented
5 under Part 1 (commencing with Section 25) or Part 2.7
6 (commencing with Section 60).

7 (3) The spouse of the patient or the person financially
8 responsible for the patient, where the medical information is being
9 sought for the sole purpose of processing an application for health
10 insurance or for enrollment in a nonprofit hospital plan, a health
11 care service plan, or an employee benefit plan, and where the
12 patient is to be an enrolled spouse or dependent under the policy
13 or plan.

14 (4) The beneficiary or personal representative of a deceased
15 patient.

16 (d) States the specific uses and limitations on the types of
17 medical information to be disclosed.

18 (e) States the name or functions of the provider of health care,
19 health care service plan, pharmaceutical company, or contractor
20 that may disclose the medical information.

21 (f) States the name or functions of the persons or entities
22 authorized to receive the medical information.

23 (g) States the specific uses and limitations on the use of the
24 medical information by the persons or entities authorized to receive
25 the medical information.

26 (h) States a specific date after which the provider of health care,
27 health care service plan, pharmaceutical company, or contractor
28 is no longer authorized to disclose the medical information.

29 (i) Advises the person signing the authorization of the right to
30 receive a copy of the authorization.

31 SEC. 4. Chapter 2.7 (commencing with Section 56.19) is added
32 to Part 2.6 of Division 1 of the Civil Code, to read:

33
34 CHAPTER 2.7. DISCLOSURE OF HEALTH INFORMATION BY
35 HEALTH PLANS
36

37 56.19. (a) Notwithstanding any other provision of law, a health
38 plan may disclose summary health information and protected health
39 information to the health plan's third party administrator or to
40 another health plan to the extent authorized by, and in a manner

1 consistent with, the Health Insurance Portability and Accountability
2 Act of 1996 (Public Law 104-191) and the regulations adopted
3 thereunder.

4 (b) For purposes of this section, the following definitions apply:

5 (1) “Health plan” and “protected health information” have the
6 same meanings as those terms are defined in Section 160.103 of
7 Title 45 of the Code of Federal Regulations.

8 (2) “Summary health information” has the same meaning as
9 defined in Section 164.504 of Title 45 of the Code of Federal
10 Regulations.